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9. Poor men have no appeals, because of the prohibitive cost.

10. Rich men have almost all the appeals. These they would not get if they were poor; or if they had no private attorney, but had to depend on the discretion of a public defender to bring an appeal, just as a poor man would. An approximation to equality before the law would be brought about.

11. In some cases an ambitious and unconscientious prosecutor (a) gives out grand jury proceedings for the purpose of influencing the public in general, and in particular the prospective petty jury; (b) endeavors to influence the public mind by making statements to the newspapers against a prisoner; (c) presents a biased view of the facts to a grand jury, and the grand jury almost invariably indicts, since, not only in such cases as these, but in almost all cases (a) the Charles S. Lobingier, Judge of U. S. Court, Shanghai.

The district attorney thus puts a prisoner at a great disadvantage. His tremendous power is directed against the weak force of the individual. In such cases the power of the public defender would counteract and neutralize the damage the district attorney might otherwise do.

12. In all other cases, as well as in the one mentioned above, the present system is *side heavy*.

The district attorney has all the great power of the county; all the money, the detectives, the process servers, the majesty and the awe connected with the public office representing the state: the respect and awe of the jury, and the aid of the bench. The individual is usually poor, ignorant and helpless. Even the rich are at a disadvantage.

Effects of the Institution of a Public Defender on the Law of Criminal Procedure.

Intelligent laymen and many lawyers wish to see:

1. The presumption of innocence abolished.

2. A two-thirds majority of a petty jury sufficient for conviction.

3. That sham of a rule, that no inference is to be drawn against a prisoner who does not take the stand, abolished.

4. Appeals allowed the state from supposedly unjust acquittals.

5. The rules of evidence abolished, and free proof to reign.

Stephen, in his History, says that the presumption of innocence came into use because the state recognized its powerfulness and the individual's weakness, and out of its generosity makes him a concession, which is a safeguard. There is no presumption of innocence in England in the times when the state is weak and unstable. This theory does not seem to be sound. The true theory is, perhaps, not that the state was generous, but that the state was *forced* to give up some of its power; the individual wrested the safeguard from it. Whatever the theory, the *fact* is that the presumption of innocence is important only when the state is strong and the individual weak. When both the state and the individual are on the same plane there is no more excuse for it.

A public defender would counterbalance the powerfulness of the district attorney. There would be no need, then, for this presumption.

Points 2, 3, 4 and 5 have such a strong hold on the intellects and the imaginations of men, albeit in some cases, the hold is not clearly reasoned, and the causes not analyzed, because the individual is jealous and fearful of the power of the state, and wants to retain these safeguards to protect his weakness and strengthen it. Take point 5, for example. The rules of evidence appeared when the state had become extremely strong and stable—the beginning of the Nineteenth Century. That century saw their great efflorescence.

Those who are working for these five reforms should note that they might be considered dangerous under present conditions. But there could be no objection to them after the institution of a public defender. *Cessant ratio cessat lex*. There being no longer any fear that the individual would be at a disadvantage in the face of the state, since the public defender would have the authority and the power and majesty of the state, these reforms would not be opposed.

R. F.

Adult Probation Law in Illinois.—A committee of the Civic Federation of Chicago proposes certain amendments to the Adult Probation Law. The italics below designate the proposed changes in the present law.

A Bill for an Act to amend Sections 2, 3, 4, 7, 9, 12, and 13 of an Act entitled "An Act providing for a system of probation, for the appointment and

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compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses and legalizing their ultimate discharge without punishment."—Approved June 10, 1911. In force July 1, 1911.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That Sections of an Act entitled "An Act providing for a system of probation, for the appointment and compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses, and legalizing their ultimate discharge without punishment," approved June 10, 1911, in force July 1, 1911, be and the same are hereby amended so as to read as follows:

SEC. 2. *Any defendant who has never previously been convicted of a crime, who has entered a plea of guilty or been found guilty by the verdict of a jury or the finding of a court of a violation of a municipal ordinance, where the offense is also a violation in whole or in part of a statute, a misdemeanor or a crime, except murder, manslaughter, kidnapping, incest, rape or arson, may, after entry of judgment and nothing remains to be done by the court except to pronounce sentence, request the judge to be admitted to probation according to the provisions of this Act.*

SEC. 3. *Before granting or releasing any defendant on probation, the court shall require the probation officer to investigate the case of such defendant as accurately and as fully as diligence will enable, to ascertain: (a) the personal characteristics, habits, associations and previous conduct of such person; (b) the names, relationship, ages and conditions of those dependent upon him for support and education, and (c) such other and further facts as may aid the court as well in determining the propriety of probation as in fixing the conditions thereof.*

Orders granting or refusing release on probation shall be entered of record. Application for release on probation may, in the discretion of the court, be granted if it shall appear, to the satisfaction of the court, both that there is reasonable ground to expect that the defendant may be reformed and that the interests of society shall be subserved. If such application is granted, the Judge granting the same shall thereupon enter an order continuing the cause for a period not exceeding six months in cases of violation of municipal ordinances where the offense is also a violation, in whole or in part, of a statute and not exceeding one year in the case of other offenses enumerated in Section 2 of this Act, and shall by such order fix and specify the terms and conditions of the probation of such defendant as herein provided. A cause continued pursuant to the provisions of this Act shall be deemed subject to the jurisdiction of the court in which it is pending, or any judge thereof, for the full period of its continuance, during which time orders may be entered with respect to the conditions of probation, or final sentence imposed without the formal setting aside of such order of continuance.

SEC. 4. Release on probation shall be upon the following conditions:

(1) That the probationer shall not, during the term of his probation, violate any criminal law of the State of Illinois, or any ordinance of any municipality of said State as limited by Section 2 of this Act.

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(2) That if convicted of a felony or misdemeanor, he shall not, during the term of his probation, leave the State without the consent of the court which granted his application for probation.

(3) That he shall make a report once a month, *or as often as the court shall direct*, of his whereabouts, conduct and employment, and furnish such other information relating to the conditions of his probation, as may from time to time be required by rule or order of court, to the probation officer under whose charge he has been placed, and shall appear in person before the court at such time as the court may direct or the rule of court provide.

(4) That he shall enter into a bond or recognizance in such sum as the court may direct, with or without sureties, to perform the conditions imposed, which shall run to the People of the State of Illinois and may be sued on by any person thereunto authorized by the court for the use of the parties in interest as the same may appear.

And the court may impose any one or more of the following conditions:

(1) That he shall make restitution, *or reparation*, in whole or in part, immediately or within the period of probation, to the person or persons injured or defrauded.

(2) That he shall make contribution from his earnings for the support of those dependent upon him, subject to the supervision of the court.

(3) *That he shall pay any fine assessed against him, as well as the costs of the proceeding, in such installments as the court may direct, during the continuance of the probation.*

SEC. 7. Upon the termination of the probation period, the probation officer shall report to the court the conduct of the probationer during the period of his probation, and the court may thereupon discharge the probationer from further supervision, or *extend the probation period not to exceed six months in cases of violation of a municipal ordinance where the offense is also a violation, in whole or in part, of a statute, and not to exceed one year in other offenses.* When a probationer is discharged upon the expiration of the probation period, or upon its earlier termination by order of the court, entry of the discharge shall be made in the records of the court, and the probationer shall be entitled to a certified copy thereof.

SEC. 9. The circuit court of each of the several counties in this State may appoint a probation officer to act as such for and throughout the county in which he shall be appointed. The circuit court of any county may appoint such number of additional probation officers for such county as the court may deem to be necessary or advisable; Provided, the number of probation officers to be appointed for any county shall in no event exceed one for every fifty thousand inhabitants for such county, the school census preceding any appointment to be the basis for the determination of the number of inhabitants of such county. * * * Any circuit court, in any county in which there are five or more probation officers, may also, in its discretion, appoint a chief probation officer in addition to the number of probation officers herein provided for. Said probation officers shall be of good character, shall possess such other qualifications as may be provided by rules to be adopted by such courts respectively, and may by such rules each be required to give bond in a sum not exceeding five thousand (\$5,000.00) dollars, conditioned for the

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faithful discharge of the duties of such probation officer, and otherwise as provided by said rules such bond to be with such sureties as may be approved by the court. Said probation officers shall serve as such from the date of their appointment, shall be subject to the orders of the courts appointing them, and shall be removable in the discretion thereof by an order duly entered of record. Said circuit court may adopt general rules not inconsistent with the provisions of this Act, and promotive of its letter and spirit, providing, among other things, for the qualifications of probation officers, their duties, and such other matters as may seem expedient. In any city in this State having a population of fifty thousand or less inhabitants, as shown by the preceding school census, in which city there has been or may hereafter be established a municipal or city court, such municipal or city court may appoint one probation officer for such municipal or city court, in which case the number of probation officers to which any county is entitled, as above provided, shall be reduced by the number of municipal or city courts in said county established for cities having a population of fifty thousand or less inhabitants. The remaining probation officers to which any county may be entitled as aforesaid shall be equally apportioned between the county and the several cities, if any therein that severally have a population of more than fifty thousand inhabitants. Such probation officers so apportioned to such county shall be appointed by the circuit court of said county, and such probation officers so apportioned to such cities shall be appointed by the municipal or city courts in said several cities. The judges of the circuit court of any county and of the municipal or city court therein established for cities having a population of more than fifty thousand inhabitants, shall meet as a unit body at such times as they deem proper, and at any such meeting may appoint a chief probation officer, to act as such over all the probation officers appointed by any of said courts. Said judges may, at any such meeting, adopt general rules not inconsistent with the provisions of this Act, but promotive of its letter and spirit, and transact such other business concerning the subject-matter of this Act as to said judges may seem proper. Said judges may, at any such meeting, appoint a committee of such number of them as they may determine to exercise the ministerial powers of said entire body of judges and the powers of appointment and removal of the chief probation officer, such committee to report to the entire body of judges at such time as may be required by rules or by specific order.

SEC. 12. The duties of probation officers shall be:

(1) *To investigate as required by Section 3 the case of any person who has invoked the provisions of this Act. Full opportunity shall be afforded a probation officer to confer with the person under investigation when such person is in custody.*

(2) *To notify the court of any previous conviction for crime or previous probation of any defendant invoking the provisions of this Act.*

(3) *All reports and notifications required in this Act to be made by probation officers shall be in writing and shall be filed by the clerk in the respective cases.*

(4) *To preserve complete and accurate records of cases investigated, including a description of the person investigated, the action of the court with respect to his case and his probation, the subsequent history of such person if he becomes a probationer during the continuance of his probation, which*

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records shall be open to inspection by any judge or by any probation officer pursuant to order of court, but shall not be a public record, and its contents shall not be divulged otherwise than as above provided, except upon order of court.

(5) To take charge of and watch over all persons placed on probation under such regulations and for such terms as may be prescribed by the court, and giving to such probationer full instructions as to the terms of his release upon probation and requiring from him such periodical reports as shall keep the officer informed as to his conduct.

(6) *When any person on probation removes from the county where his offense was committed, it shall be the duty of the officer under whose care he was first placed to report the facts to the probation officer in the county to which the probationer has removed; and it shall thereupon become the duty of such probation officer to take charge of and watch over said probationer the same as if the case originated in that county; and for that purpose he shall have the same power and authority over said probationer as if he had been originally placed in said officer's charge; and such officer shall be required to report in writing, once a month, the results of his supervision to the probation officer in whose charge he was originally placed by the court.*

(7) To perform such other duties as are provided for in this Act or by rules of court, and such incidental duties as may be implied from those expressly required.

SEC. 13. It shall be the duty of the chief probation officer, appointed as provided in this Act, to supervise and control the work of all subordinate probation officers under his jurisdiction and control as herein provided, subject to such rules and regulations as may be adopted by the court or judges as herein provided, and to supervise the conduct of probationers to such extent as the court or said judges, and the rules herein provided for, may direct.

Any chief probation officer shall have authority to suspend any probation officer under his supervision for a period of not exceeding thirty days, but may not discharge, and it shall be the duty of such chief probation officer promptly to file charges against any probation officer so suspended by him with the court or judges appointing such probation officer, and said court or judges shall thereupon investigate said charges and may hear evidence, and shall act thereon as the interests of justice and the good of the probation service may require.

The records concerning probationers shall be kept in one office under the supervision of the chief probation officer, to whom all such probation officers must report. It shall be the duty of the board of county commissioners or supervisors of each county in this State in which probation officers may be appointed under the provisions of this Act, to furnish suitable rooms and accommodations, equipment and supplies for said probation officers and clerical assistants in that jurisdiction, and for the keeping of the records, equipment and supplies of the office. The number of clerical assistants shall be determined by the circuit court, *and shall be appointed by said chief probation officer.* Salaries of said clerical assistants shall be fixed by the board of county commissioners or supervisors.

Section 9 above would have the effect of more than doubling the number of adult probation officers in Chicago and Cook County.

R. H. G.